

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FEDERAL HOME LOAN MORTGAGE  
CORPORATION,

Plaintiff/Counter-Defendant,

Case No. 1:11-cv-577

v.

HON. JANET T. NEFF

ERVIN JOSEPH LAMIE, JR.,

Defendant/Counter-Plaintiff.

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**OPINION AND ORDER**

This matter is before the Court on Defendant/Counter-Plaintiff Ervin Lamie, Jr.’s<sup>1</sup> (“Defendant”) objections to the Magistrate Judge’s Report and Recommendation (Dkt 30), recommending that this Court grant Plaintiff/Counter-Defendant Federal Home Loan Mortgage Corporation’s (“Freddie Mac”) Motion to Dismiss Counter Complaint and for Summary Judgment on the Complaint. Freddie Mac has filed a Response to Defendant’s Objections (Dkt 32), and Defendant has filed an “Objection to the Objections by the Counter Defendant”<sup>2</sup> (Dkt 34). In

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<sup>1</sup>It is unclear from the record whether Defendant’s surname is properly spelled as Lamie or LaMie. Both spellings have been used throughout the record. The Court relies on the spelling docketed on the Court’s Electronic Court Filing docket.

<sup>2</sup>Defendant’s “Objection to the Objections” are not properly before the Court since the local rules do not permit such additional response and Defendant failed to obtain leave of the Court for this additional filing. *See* W.D. Mich. LCivR 72.3(b). In any event, this Court has considered Defendant’s filing, which essentially reiterates his previous objection, and finds nothing that alters the analysis or disposition of this case. Further, Defendant’s procedural objections are without merit because Freddie Mac’s Response was timely filed as a response to Defendant’s Objection; Freddie Mac filed a Proof of Service; and Defendant clearly received the Response, since he references its substance in his Objection to the Objections. *See id.*; *see also* Dkt 33.

accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. Defendant's objections are without merit.

The Magistrate Judge recommended that Freddie Mac's Motion be granted on the basis of *res judicata* in light of this Court's previous dismissal of a related case, 1:11-cv-156. Defendant raises three objections to the Magistrate Judge's Report and Recommendation. Defendant's first objection reasserts allegations of a conspiracy to commit fraud and deprive him of his property by Freddie Mac and several other parties, and emphasizes that he has so alleged in a subsequent lawsuit (Dkt 30 at 3-8). This objection is without merit because as the Magistrate Judge pointed out, these claims wholly fail to address the *res judicata* issue, which is the basis of Freddie Mac's motion (Dkt 29 at 8). Further, as the Magistrate Judge observed, allegations of wrongdoing with respect to the foreclosure "could and should have been raised in the prior action" (Dkt 29 at 7). Defendant has not disputed this nor has he shown that the Magistrate Judge erred in this analysis. Rather, he merely reasserts the fraud allegations. Accordingly, this objection is denied.

Defendant next objects that *res judicata* "does not apply here because all the parties involved are not the same" (Dkt 30 at 5). However, Defendant's argument is mistakenly premised on his newly filed lawsuit, not the previous related action. Both Defendant and Freddie Mac were involved in the prior action, and Defendant points to no facts calling into question the Magistrate Judge's conclusion that "both actions involve exactly the same parties and the same transactions" (Dkt 29 at 8). Therefore, this objection is also denied.

Defendant's third objection is that he has not had "ample opportunity to conduct discoveries in this case" (Dkt 30 at 5). This objection is without merit because discovery is unnecessary to

resolve the preclusive effect of the prior case. Because Defendant's claims are precluded by *res judicata* and he has not established otherwise, this objection is also without merit.

Accordingly:

**IT IS HEREBY ORDERED** that Defendant's Objections (Dkt 30) are DENIED and the Report and Recommendation is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Plaintiff's Motion to Dismiss Defendant's Counter-Complaint and Motion for Summary Judgment on its Complaint is (Dkt 17) GRANTED.

Dated: February 26, 2013

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge